

1 IN THE UNITED STATES DISTRICT COURT

2 FOR THE DISTRICT OF HAWAII

3  
4 WAYNE BERRY,

5 Plaintiff,

6 vs.

7 FLEMING COMPANIES, INC., )  
aka FLEMING FOODS, INC., )  
8 aka FLEMING, DOE )  
INDIVIDUALS 1-50 and )  
9 DOE PARTNERSHIPS, )  
CORPORATIONS and OTHER )  
10 ENTITIES 1-20, )

11 Defendants. )  
12

CIVIL NO. 01-00446SPK-LEK

13 TRANSCRIPT OF PROCEEDINGS

14  
15 The above-entitled matter came on for Further  
16 Jury Trial commencing at 10:00 a.m. on Tuesday, March  
17 4, 2003, Honolulu, Hawaii,

18  
19 BEFORE: HONORABLE SAMUEL P. KING

20 United States District Judge

21 District of Hawaii

22  
23  
24 REPORTED BY: LISA J. GROULX, COURT REPORTER

25 Notary Public, State of Hawaii

LISA GROULX & ASSOCIATES  
(808) 225-5701

Exhibit E

## I N D E X

DEFENDANT'S WITNESSES:PAGES

JACK BORJA

Direct examination by Mr. Smith 5

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TERESA NOA

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REBUTTAL WITNESSES:

WAYNE BERRY

Direct examination by Mr. Hogan 100

EXHIBITS:MARKEDRECEIVED

(None.)

1 Freight Control System; isn't that a true statement,  
2 ma'am?

3 A. Yes.

4 Q. There was never a time when you went to work  
5 for Fleming that that was unclear in your mind?

6 A. That there was an access databases involved?

7 Q. Right.

8 A. I understood, yes.

9 Q. Do you believe that Mr. Stussi understood  
10 that? Did you have any reason to believe that that he  
11 didn't?

12 MR. SMITH: Calls for speculation.

13 THE COURT: Yes, it does.

14 Q. (By Mr. Hogan) Did you ever discuss it with  
15 Mr. Christensen?

16 A. The database itself?

17 Q. Yes.

18 A. No, just the setup and the operation. That's  
19 all Steve was concerned with.

20 Q. Did he ever ask you what parts were in the  
21 system that Mr. Berry was going to license?

22 A. No.

23 Q. Mr. Christensen did not?

24 A. He never did.

25 Q. And Mr. Stussi as well did not ask you?

1 A. No.

2 Q. Did Mr. Tsurada ask you?

3 A. No.

4 Q. Now you testified regarding the people at --  
5 originally, it was Fleming people that were being  
6 allowed to use the system in California; is that  
7 correct?

8 A. Correct.

9 Q. And at some point they became Hawaiian  
10 Express employees?

11 A. Correct.

12 Q. And then you testified that they still report  
13 to you.

14 A. They do.

15 Q. Now are you their supervisor?

16 A. I am.

17 Q. Do you believe --

18 A. If I ever have any -- they listen to me. And  
19 if I ever have a problem with them, I just call the  
20 next line up.

21 Q. And who would that be?

22 A. Pete Shaw.

23 Q. But they're not Fleming employees; is that a  
24 fair statement, ma'am?

25 A. It is.

1 Q. And, in fact, you work with them but they  
2 don't actually work for you, do they?

3 A. Well, actually, yes. We get an invoice from  
4 Hawaiian Express for \$8,000 a month which is to cover  
5 their salaries.

6 Q. To cover their salaries?

7 A. Correct.

8 Q. What are these peoples names?

9 A. Al Perez and Pat Hiroyama.

10 Q. Describe briefly how they use the database?

11 THE COURT: If you know.

12 Q. If you know.

13 A. They're pretty much just gathering  
14 information, the bills of lading. The product is  
15 delivered to their facility and it's on a bill of  
16 lading. They take the information off the bill of  
17 lading and they input it into the database. They  
18 follow my load plan instructions. I advise them how  
19 to load a container. Once that container is loaded,  
20 they fax me the load plan, which will show me the  
21 container, the seal, the vessel voyage, and the  
22 sequence of the orders. I input that information.

23 Q. Okay. But are they able to actually access  
24 the database from California?

25 A. Yes.

1 MR. HOGAN: Thank you. Nothing further.

2 THE COURT: Are these people technically  
3 employees of Hawaiian Express when Hawaiian Express  
4 bills Fleming for their salaries?

5 THE WITNESS: They do.

6 THE COURT: Go ahead.

7 REDIRECT EXAMINATION

8 BY MR. SMITH:

9 Q. And in follow up to the court's question, do  
10 Mr. Perez and Mr. Hiroyama do anything with that  
11 database other than service Fleming?

12 A. They do not.

13 Q. And who gives them instructions on what to do  
14 with that database?

15 A. I do.

16 Q. Anybody besides you?

17 A. No.

18 Q. There was just a little confusion that I  
19 wanted to see if I can clear up. Your number of 80 to  
20 120 containers is the containers that you handle or  
21 that your department handles coming into Fleming,  
22 right?

23 A. Correct.

24 Q. But there are additional containers that come  
25 to Fleming from vendors that pay their own freight to